

A Regular Meeting of the Zoning Board of Appeals of the Town of Lancaster, Erie County, New York, was held at the Lancaster Town Hall, 21 Central Avenue, Lancaster, New York, on the 12th day of February 2004, at 8:00 P.M., and there were

PRESENT: JEFFREY LEHRBACH, CHAIRMAN

 ANTHONY ESPOSITO, MEMBER

 JOSEPH GIGLIA, MEMBER

 WILLIAM MARYNIEWSKI, MEMBER

 RICHARD QUINN, MEMBER

 ARLIE SCHWAN, MEMBER

 ROBERT THILL, MEMBER

ABSENT: NONE

ALSO PRESENT: JOHANNA M. COLEMAN, TOWN CLERK

 RICHARD SHERWOOD, TOWN ATTORNEY

 GEORGE PEASE, ASSISTANT BUILDING INSPECTOR

The Affidavits of Publication and Posting of this Public Hearing are on file and a copy of the Legal Notice has been posted.

PETITION OF TIMOTHY & LINDA MCGOVERN:

THE 1st CASE TO BE CONSIDERED BY THE Zoning Board of Appeals was that of the petition of Timothy and Linda McGovern, 1 Nottingham Lane, Lancaster, New York 14086 for one [1] variance for the purpose of erecting a fence ranging from [5] feet to six [6] feet in height in a required open space area on premises owned by the petitioner at 1 Nottingham Lane, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster. The premises upon which this variance is sought is a corner lot fronting on Nottingham Lane with an exterior side yard [considered a front yard equivalent] fronting on Thomas Drive. The petitioners propose to erect a fence ranging from five [5] feet to six [6] feet in height within the required open space area of the exterior side yard fronting on Thomas Drive.

Chapter 50, Zoning, Section 35C. of the Code of the Town of Lancaster limits the maximum height of a fence or wall extending into a front yard or an exterior side yard [considered a front yard equivalent] to three [3] feet in height. The petitioners, therefore, request a three [3] foot fence height variance.

At this meeting, the Zoning Board of Appeals will render findings and a determination of the aforementioned variance petition.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicants with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioners of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

IN THE MATTER OF THE PETITION OF TIMOTHY & LINDA MCGOVERN

THE FOLLOWING RESOLUTION WAS OFFERED
BY MR. THILL, WHO MOVED ITS
ADOPTION, SECONDED BY MR. ESPOSITO
TO WIT:

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application dated December 19, 2003 of Timothy & Linda McGovern and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 8th day of January 2004, and having heard all parties interested in said application pursuant to legal notice duly published and posted.

**NOW, THEREFORE, BE IT
RESOLVED** that the Zoning Board of Appeals of the Town of Lancaster adopt the following findings of fact in this matter with any individual member dissensions noted.

FINDINGS

That this matter is properly before this Zoning Board of Appeals from a rejection of the Building and Zoning Inspector of the Town of Lancaster to approve a building permit due to the height of the proposed fence and location within a required exterior side yard. **Dissension - Mr. Quinn**

That the affidavits of publication and posting presented by the clerk to the Zoning Board indicated that notice of the public hearing on this matter was duly published and posted according to law.

That the premises upon which this variance is sought is located within a R-1 district [Residential District 1] as set forth in the zoning ordinance and map of the Town of Lancaster adopted on May 15, 1989, and as amended to date.

That the petitioners are the owners of the premises upon which the variance is sought.

That the petitioners could erect only a three foot high fence within the exterior side yard of the premises at 1 Nottingham Lane that fronts on Thomas Drive without the granting of a variance. **Dissension - Mr. Quinn**

That the premises upon which this variance is sought is an odd shaped triangular peninsula lot with the residence fronting on Nottingham Lane and with a severe switchback exterior side yard fronting on Thomas Drive.

That the property line switchback on Thomas Drive severely limits the area of the exterior side yard that can be enclosed with a privacy fence exceeding 3 feet in height.

That the strict application of the provisions of Chapter 50, Zoning Section 35C of the Code of the Town of Lancaster would limit the petitioners to a six (6) foot high privacy fence enclosed rear yard area of approximately 2,300 square feet with an area shaped like a triangle with a fifteen (15) foot blunt end. **Dissension - Mr. Quinn**

That a dwelling exists at 8 Thomas Drive with a front yard facing Thomas Drive that will be impacted by any exterior side yard variance granted to the petitioners.

That a five (5) foot picket fence with an increasing three (3) foot to ten (10) foot green space buffer area is proposed along that portion of the petitioners' rear property line which is contiguous with the north [driveway] side property line of 8 Thomas Drive. **Dissension - Mr. Quinn**

That a six foot solid fence [not open picket] is proposed for that area in the exterior side yard running parallel with Thomas Drive. **Dissension - Mr. Quinn**

That EXHIBIT A drawn to scale of 1" = 30' attached to and made part of the petitioners' application was prepared by Mr. Timothy McGovern, one of the petitioners who resides on the premises and who is a New York State licensed Civil Engineer familiar with site lines and distance measurements. **Dissension - Mr. Quinn**

That EXHIBIT A demonstrates that the fence as proposed will provide an adequate site line for vehicles backing out of the driveway at 8 Thomas Drive and will not be a hazard to health, safety or the general welfare. **Dissension - Mr. Quinn**

That EXHIBIT A demonstrates that in a worse case scenario, a vehicle parked in front of the garage at 8 Thomas Drive in the north driveway lane will be provided a 220 foot unobstructed line of site north along Thomas Drive prior to backing up and that this unobstructed site line increases with each foot the vehicle backs up toward the street. **Dissension - Mr. Quinn**

That the petitioners previously applied on September 18, 2003 for a three (3) foot fence height variance to enclose 6,519 square feet of the rear and side yard at 1 Nottingham Lane with 310 feet of a six (6) foot high solid white vinyl fence. This variance request was heard by the Zoning Board of Appeals at a hearing on October 9, 2003. The board adjourned this hearing to give the petitioners an opportunity to consider an amendment to their petition reducing the fence height and/or area to be enclosed by the fence.

That the petitioners amended their petition of September 18, 2003 to reduce the area proposed to be enclosed by 1,419 square feet, that is 21% from 6,519 square feet to 5,100 square feet. The fence height and type remained unchanged; however, the angle of the rear corner facing the property at 8 Thomas Drive was widened to provide greater site line distance for vehicles exiting the driveway at that location.

That the application of September 18, 2003 as amended was heard by this board at a hearing held on November 13, 2003 and was denied.

That on December 19, 2003, the petitioners filed a new application for a two (2) foot and three (3) foot fence height variance.

That on January 8, 2004 this board adopted a resolution accepting the petition of December 19, 2003 as containing substantial and material changes so as to warrant its consideration as a new petition as opposed to a reconsideration of a prior variance determination. **It is noted that Mr. Quinn voted no to this resolution on January 8, 2004.**

That on January 8, 2004, this board took evidence and testimony regarding the petition dated December 19, 2003 and heard all persons desiring to be heard. The board adopted a resolution closing this hearing and the time for taking further evidence and testimony and tabled its decision on this matter.

That eleven (11) neighbors within 100 feet of the petitioners' residence were notified of the September 18, 2003 original variance request and the October 9, 2003 public hearing. Two persons appeared at that hearing and expressed opposition: Richard and Lynn Woods of 8 Thomas Drive.

That eleven (11) neighbors within 100 feet of the petitioners' residence were notified of the September 18, 2003 *amended* variance request and November 13, 2003 public hearing. Two persons appeared at that hearing and expressed opposition: Richard and Lynn Woods of 8 Thomas Drive.

That eleven (11) neighbors within 100 feet of the petitioners residence were notified of the December 19, 2003 **new variance** request and January 8, 2004 public hearing. One person appeared and expressed opposition: Arthur J. Giacalone, an attorney representing Richard and Lynn Woods of 8 Thomas Drive. Mr. & Mrs. Woods were present but did not address the board.

That on January 8, 2004 Arthur J. Giacalone, representing Richard and Lynn Woods of 8 Thomas Drive, addressed this board and submitted comments in writing alleging grounds for denial of the variance and requesting that this board deny the relief sought.

That Mr. Giacalone was asked if he brought with him any factual evidence to substantiate the allegations for denial set forth in his letter. Mr. Giacalone responded that the application of the petitioners with the exhibits attached clearly substantiate his statements. No further evidence was presented by Mr. Giacalone. **Dissension - Mr. Lehrbach. It is noted that Mr. Lehrbach has not voted in the affirmative to this finding because he was not in attendance at the January 8, 2004 meeting.**

That the variance is substantial namely: 100% for the three (3) foot additional height along Thomas Drive and 67% for the two (2) foot additional height along the rear property line.

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought. **Dissension - Mr. Quinn**

That no detriment to nearby properties will be created by the granting of the area variance relief sought. **Dissension - Mr. Quinn**

That the benefit sought by the applicants cannot be achieved by some other method, feasible for the applicants to pursue, other than the area variance relief sought. - **Dissension - Mr. Quinn**

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. **Dissensions - Mr. Esposito, Mr. Quinn**

That the alleged difficulty is self created, but not to the extent necessary to preclude the granting of the area variance relief sought. **Dissension - Mr. Quinn**

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED NO
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

IN THE MATTER OF THE DECEMBER 19, 2003 PETITION OF TIMOTHY & LINDA MCGOVERN

THE FOLLOWING RESOLUTION WAS OFFERED
BY MR. THILL, WHO MOVED ITS
ADOPTION, SECONDED BY MR. MARYNIEWSKI
TO WIT:

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has taken evidence and testimony at a public hearing held before it on January 8, 2004 upon the petition of Timothy and Linda McGovern for a variance from the provisions of Chapter 50, Zoning, Section 35.C of the Code of the Town of Lancaster, and

WHEREAS, the petitioners seek relief from these provisions for the purpose of erecting a fence in excess of the height limitations set forth in said provisions, and

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has adopted findings in this matter at a public meeting held on the 12th day of February 2004, and

WHEREAS, all persons desiring to be heard on this matter have been heard.

NOW, THEREFORE BE IT

RESOLVED that the Zoning Board of Appeals has, based upon its extensive review and detailed findings of fact concerning the requested variance, determined that:

- no undesirable change will be produced in the neighborhood by the granting of the area variance sought;
- no detriment to nearby properties will result from the granting of the area variance sought;
- the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue other than the area variance relief sought;
- the area variance relief sought is substantial;
- the area variance relief sought will not have an adverse effect on or impact on the physical or environmental conditions in the neighborhood;
- the difficulty prompting the variance relief sought is self created but not to the extent necessary to preclude the granting of the area variance when viewed against the preponderance of evidence demanding relief;
- this board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood by such grant;
- within the purpose and intent of Chapter 50, Zoning, of the Town of Lancaster, the variance relief sought is the minimum variance necessary to afford relief;
- the proposed fence will not shut out air or light to adjoining properties or cause a safety or fire hazard; and

BE IT FURTHER

RESOLVED, that the petitioners, Timothy and Linda McGovern, be granted the following variance from the Zoning Board of Appeals of the Town of Lancaster, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 35.C of the Code of the Town of Lancaster for the purpose of erecting a five foot and six foot high fence in the exterior side yard [considered a front yard equivalent] on premises owned by the petitioners at 1 Nottingham Lane, Lancaster, New York, in accordance with the application of the petitioners dated December 19, 2003 , as filed in the office of the Town Clerk.

BE IT FURTHER

RESOLVED, that this variance is granted subject to the following condition which in the opinion of this board is an appropriate condition to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety, convenience and general welfare:

- That any vegetation planted outside the fence area shall not obstruct the site line as depicted on exhibit A of the petitioners' application dated December 19, 2003; specifically the southeast corner of the petitioners' lot.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED NO
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

February 12, 2004

PETITION OF THEODORE B. KULBACKI:

THE 2nd CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of Theodore B. Kulbacki, 2 Wendling Court, Lancaster, New York 14086 for three [3] variances for the purpose of constructing a five thousand [5,000] square foot office building on property owned by the petitioner on Como Park Boulevard, Lancaster, New York immediately west of 1767 Como Park Boulevard (Edu Kids) and identified on the tax maps as SBL # 115.01-2-2.12, to wit:

- A. A variance from the requirements of Chapter 50, Zoning, Section 22C. (1) of the Code of the Town of Lancaster. The lot area is .64 acre.

Chapter 50, Zoning, Section 22C.(1) of the Code of the Town of Lancaster requires a minimum lot area of one (1) acre. A variance of .36 acre is requested.

- B. A variance from the requirements of Chapter 50, Zoning, Section 22C.(3) of the Code of the Town of Lancaster. The location of the proposed office building would result in a 14.5 foot south rear yard set back.

Chapter 50, Zoning, Section 22C.(3) of the Code of the Town of Lancaster requires a fifty [50] foot south rear yard set back. The petitioner, therefore, requests a 35.5 foot south rear yard set back variance.

- C. A variance from the requirements of Chapter 50, Zoning, Section 22C.(3) of the Code of the Town of Lancaster for the purpose of constructing a parking lot. The location of the proposed parking lot would result in a 2.19 foot west side yard set back.

Chapter 50, Zoning, Section 22C.(3) of the Code of the Town of Lancaster requires a twenty five [25] foot west side yard set back. The petitioner, therefore, requests a 22.81 foot west side yard set back variance.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

Copy of a letter notifying the Erie County Department of Planning of the time and place of this public hearing.

Copy of a letter notifying Village of Depew, Depew Union Free School District and United States Postal Service of the time and place of this public hearing.

PERSONS ADDRESSING THE BOARD

Ralph Lorigo, attorney for the petitioner

A motion by Mr. Esposito, seconded by Mr. Thill, to consider all of the petitioner's variance requests as a single action, resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

Motion Carried

IN THE MATTER OF THE PETITION OF THEODORE KULBACKI

THE FOLLOWING RESOLUTION WAS OFFERED
BY MR. QUINN, WHO MOVED ITS
ADOPTION, SECONDED BY MR. LEHRBACH
TO WIT:

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Theodore Kulbacki and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 12th day of February 2004, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That the applicant is the present owner of the premises in question.

That the property for which the applicant is petitioning is within a Residential District 2, (R2) as shown on the Zoning Map of the Town of Lancaster.

That the use sought is a permitted use appearing in the Residential District 2, (R2) as specified in Chapter 50 of the Code of the Town of Lancaster.

That the Erie County Division of Planning commented on the proposed zoning action as follows:

"No recommendation; proposed action has been reviewed and determined to be of local concern."

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That no detriment to nearby properties will be created by the granting of the area variance relief sought.

That the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

That this board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

That the premises upon which these variances are sought is an individual lot of record located on the south side of Como Park Boulevard sandwiched between a day care center locally known as "EduKids" and the entrance driveway to the United States Postal regional distribution center.

That the rear lot line of the premises upon which these variances are sought adjoins the parking lot of the United States Postal distribution center.

That the acquisition of additional property from the United States Postal Service or from EduKids to increase the size of this subject parcel is not feasible since both of these properties are presently developed for their intended uses.

That the property to the north of the premises upon which these variances are sought is vacant

land owned by the Depew Union Free School District and used for a sports field.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	VOTED YES
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution granting the variances was thereupon **ADOPTED.**

February 12, 2004

PETITION OF KOHL'S DEPARTMENT STORE, INC:

THE 3rd CASE TO BE HEARD BY THE Zoning Board of Appeals was that of the petition of Kohl’s Department Store, Inc., N56 W17000 Ridgewood Drive, Menomonee Falls, Wisconsin 53051 for one [1] variance for the purpose of erecting lighting fixtures on premises owned by the petitioner at 4839 and 4827 Transit Road, Lancaster, New York, to wit:

A variance from the requirements of Chapter 50, Zoning, Section 23B.(3) of the Code of the Town of Lancaster. The petitioner requests lighting fixtures to be placed at a height of thirty-two [32] feet.

Chapter 50, Zoning, Section 23B.(3) stipulates that the lighting fixture height above grade shall not exceed fifteen [15] feet in or adjacent to a residential district or use, and in no instance shall they exceed twenty [20] feet above grade. The petitioner, therefore, requests a variance of seventeen [17] feet.

The Clerk presented and entered into evidence the following items:

Duly executed petition of the applicant with exhibits and schedules attached thereto.

Copy of a letter notifying the petitioner of the time and place of this public hearing.

Copy of a letter notifying owners of property within 100 feet of requested variance of the time and place of this public hearing.

Copy of a letter notifying the Erie County Department of Planning of the time and place of this public hearing.

Copy of a letter notifying Town of Cheektowaga of the time and place of this public hearing.

PERSONS ADDRESSING THE BOARD

Paul Colucci, Costich Engineering, representing the petitioner

Cheryl Trzecki	Opponent
26 Petersbrook Circle	
Lancaster, New York 14086	

Robert Trzecki	Opponent
26 Petersbrook Circle	
Lancaster, New York 14086	

Jill Carollo	Opponent
28 Petersbrook Circle	
Lancaster, New York 14086	

Rose Tyrpak	Opponent
30 Petersbrook Circle	
Lancaster, New York 14086	

IN THE MATTER OF THE PETITION OF KOHL'S DEPARTMENT STORE, INC.

THE FOLLOWING RESOLUTION WAS OFFERED
BY MR. LEHRBACH, WHO MOVED ITS
ADOPTION, SECONDED BY MR. QUINN
TO WIT:

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has reviewed the application of Kohl's Department Store, Inc. and has heard and taken testimony and evidence at a public hearing held before it at 21 Central Avenue, Lancaster, New York, on the 12th day of February 2004, and having heard all parties interested in said application pursuant to legal notice duly published and posted, and

WHEREAS, the Zoning Board of Appeals of the Town of Lancaster has made the following findings:

That the applicant is the present owner of the premises in question.

That the property for which the applicant is petitioning is within a General Business District, (GB) as shown on the Zoning Map of the Town of Lancaster.

That the use sought is a permitted use appearing in the General Business District, (GB) as specified in Chapter 50 of the Code of the Town of Lancaster.

That the Erie County Division of Planning commented on the proposed zoning action as follows:

"No recommendation; proposed action has been reviewed and determined to be of local concern."

That no undesirable change will be produced in the character of the neighborhood by the granting of the area variance relief sought.

That there is not sufficient evidence that a seventeen (17) foot reduction in pole height would lessen impact in the neighborhood.

That the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than the area variance relief sought.

That the requested area variance relief is substantial, however, based on testimony it is not sufficient enough reason to deny the variance.

That the proposed area variance relief will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

That the alleged difficulty is self created but not to the extent necessary to preclude the granting of the area variance relief sought.

That this board has taken into consideration the benefit to the applicant if the variance relief sought is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

That within the intent and purposes of this ordinance the variance relief sought, if granted, is the minimum variance necessary to afford relief.

NOW, THEREFORE, BE IT

RESOLVED that based upon these findings, the relief sought be and is hereby **GRANTED**-subject to the following conditions which in the opinion of this board are appropriate conditions to minimize adverse effects on the character of the surrounding area and to safeguard the public health, safety, convenience and general welfare:

- That the petitioner will provide house side shields on the lamp fixtures located on the east side of the building.
- In the event that the neighboring property owners express a problem with excessive light emanating from the project site, the Town of Lancaster will direct the petitioner to remedy the situation by providing additional house side shields on the appropriate lamp fixtures.
- The three (3) single luminaries located to the east of the building shall not be designated as security lights.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

MR. ESPOSITO	WAS ABSENT - left meeting at 10:10 p.m.
MR. GIGLIA	VOTED YES
MR. MARYNIEWSKI	VOTED YES
MR. QUINN	VOTED YES
MR. SCHWAN	VOTED YES
MR. THILL	VOTED YES
MR. LEHRBACH	VOTED YES

The resolution granting the variance was thereupon **ADOPTED**.

February 12, 2004

ON MOTION DULY MADE, SECONDED AND CARRIED, the meeting was adjourned at 10:34 P.M.

Signed _____
Johanna M. Coleman, Town Clerk
Dated: February 12, 2004